



# House of Representatives

General Assembly

**File No. 37**

February Session, 2004

House Bill No. 5198

*House of Representatives, March 11, 2004*

The Committee on Public Health reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46a-11a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 For the purposes of sections 46a-11a to 46a-11g, inclusive, as  
4 amended by this act:

5 [(a)] (1) "Abuse" means the wilful infliction of physical pain or  
6 injury or the wilful deprivation by a caretaker of services which are  
7 necessary to the person's health or safety;

8 [(b)] (2) "Neglect" means a situation where a person with mental  
9 retardation either is living alone and is not able to provide for himself  
10 the services which are necessary to maintain his physical and mental  
11 health or is not receiving such necessary services from the caretaker;

12        [(c)] (3) "Caretaker" means a person who has the responsibility for  
13 the care of a person with mental retardation as a result of a family  
14 relationship or who has assumed the responsibility for the care of the  
15 person with mental retardation voluntarily, by contract or by order of  
16 a court of competent jurisdiction. Neither a guardian nor a conservator  
17 need be a caretaker;

18        [(d)] (4) "Conservator" means a conservator of the person or of the  
19 estate appointed pursuant to section 45a-644 to 45a-662, inclusive;

20        [(e)] (5) "Director" means the director of the Office of Protection and  
21 Advocacy for Persons with Disabilities;

22        [(f)] (6) "Facility" means any public or private hospital, nursing  
23 home facility, training school, regional facility, group home,  
24 community training home, school or other program serving persons  
25 with mental retardation;

26        [(g)] (7) "Guardian" means the guardian or limited guardian of a  
27 person with mental retardation appointed pursuant to sections 45a-668  
28 to 45a-684, inclusive, as amended;

29        [(h)] (8) "Person with mental retardation" means a person who: (A)  
30 has mental retardation, as defined in section 1-1g, [who] (B) is at least  
31 the age of eighteen and under the age of sixty, except for purposes of  
32 subsection (b) of section 46a-11c, as amended by this act, is eighteen  
33 years of age or older, and [who] (C) is substantially unable to protect  
34 himself from abuse and includes all such persons living in residential  
35 facilities under the jurisdiction of the Department of Mental  
36 Retardation;

37        [(i)] (9) "Protective services" means services provided by the state or  
38 any other governmental or private organization or individual which  
39 are necessary to prevent abuse or neglect. Such services may include  
40 the provision of medical care for physical and mental health needs; the  
41 provision of support services in the facility, including the time limited  
42 placement of department staff in such facility; the relocation of a

43 person with mental retardation to a facility able to offer such care  
44 pursuant to section 17a-210, as amended, 17a-274, as amended, or 17a-  
45 277, as applicable; assistance in personal hygiene; food; clothing;  
46 adequately heated and ventilated shelter; protection from health and  
47 safety hazards; protection from maltreatment, the result of which  
48 includes, but is not limited to, malnutrition, deprivation of necessities  
49 or physical punishment; and transportation necessary to secure any of  
50 the above-stated services, except that this term shall not include taking  
51 such person into custody without consent; and

52 [(j)] (10) "Commissioner" means the Commissioner of Mental  
53 Retardation.

54 Sec. 2. Subsection (a) of section 46a-11b of the general statutes is  
55 repealed and the following is substituted in lieu thereof (*Effective*  
56 *October 1, 2004*):

57 (a) Any physician or surgeon licensed under the provisions of  
58 chapter 370, any resident physician or intern in any hospital in this  
59 state, whether or not so licensed, any registered nurse, any person paid  
60 for caring for persons in any facility and any licensed practical nurse,  
61 medical examiner, dental hygienist, dentist, occupational therapist,  
62 optometrist, chiropractor, psychologist, podiatrist, social worker,  
63 school teacher, school principal, school guidance counselor, school  
64 paraprofessional, mental health professional, physician assistant,  
65 licensed or certified substance abuse counselor, licensed marital and  
66 family therapist, speech pathologist, clergyman, police officer,  
67 pharmacist, physical therapist or sexual assault counselor or battered  
68 women's counselor as defined in section 52-146k who has reasonable  
69 cause to suspect or believe that any person with mental retardation has  
70 been abused or neglected shall, [within five calendar days] as soon as  
71 practicable but not later than seventy-two hours after such person has  
72 reasonable cause to suspect or believe that a person with mental  
73 retardation has been abused or neglected, report such information or  
74 cause a report to be made in any reasonable manner to the director or  
75 persons the director designates to receive such reports. Such initial

76 report shall be followed up by a written report [within five additional]  
77 not later than five calendar days after the initial report was made. Any  
78 person required to report under this subsection who fails to make such  
79 report shall be fined not more than five hundred dollars.

80 Sec. 3. Section 46a-11c of the general statutes, as amended by section  
81 3 of public act 03-146, is repealed and the following is substituted in  
82 lieu thereof (*Effective October 1, 2004*):

83 (a) The director, upon receiving a report that a person with mental  
84 retardation allegedly is being or has been abused or neglected, shall  
85 make an initial determination whether such person has mental  
86 retardation, shall determine if the report warrants investigation and  
87 shall cause, in cases that so warrant, a prompt, thorough evaluation to  
88 be made to determine whether the person has mental retardation and  
89 has been abused or neglected. [In cases where there is a death of a  
90 person with mental retardation for whom the Department of Mental  
91 Retardation has direct or oversight responsibility for medical care, and  
92 there are allegations that such death may be due to abuse or neglect,  
93 the director shall conduct an investigation to determine whether abuse  
94 or neglect occurred, except as may be otherwise required by court  
95 order. The director, in consultation with the Commissioner of Mental  
96 Retardation, shall establish protocols for conducting such  
97 investigations.] For the purposes of sections 46a-11a to 46a-11g,  
98 inclusive, as amended by this act, the determination of mental  
99 retardation may be made by means of a review of records and shall not  
100 require the director to conduct a full psychological examination of the  
101 person. Any delay in making such determination of mental retardation  
102 shall not delay the investigation of abuse or neglect or  
103 recommendation of provision of protective services. The evaluation  
104 shall include a visit to the named person with mental retardation and  
105 consultation with those individuals having knowledge of the facts of  
106 the particular case. All state, local and private agencies shall have a  
107 duty to cooperate with any investigation conducted by the Office of  
108 Protection and Advocacy for Persons with Disabilities under this  
109 section, including the release of complete client records for review,

110 inspection and copying, except where the person with mental  
111 retardation refuses to permit his or her record to be released. The  
112 director shall have subpoena powers to compel any information  
113 related to such investigation. All client records shall be kept  
114 confidential by said office. Upon completion of the evaluation of each  
115 case, written findings shall be prepared which shall include a  
116 determination of whether abuse or neglect has occurred and  
117 recommendations as to whether protective services are needed. The  
118 director, except in cases where the parent or guardian is the alleged  
119 perpetrator of abuse or is residing with the alleged perpetrator, shall  
120 notify the parents or guardian, if any, of the person with mental  
121 retardation if a report of abuse or neglect is made which the director  
122 determines warrants investigation. The director shall provide the  
123 parents or guardians who the director determines are entitled to such  
124 information with further information upon request. The person filing  
125 the report of abuse or neglect shall be notified of the findings upon  
126 request.

127 (b) In cases where there is a death of a person with mental  
128 retardation for whom the Department of Mental Retardation has direct  
129 or oversight responsibility for medical care, and there are allegations  
130 that such death may be due to abuse or neglect, the Commissioner of  
131 Mental Retardation shall notify the director or the director's designee  
132 not later than twenty-four hours after such death and the director shall  
133 conduct an investigation to determine whether abuse or neglect  
134 occurred, except as may be otherwise required by court order. The  
135 director, in consultation with the Commissioner of Mental Retardation,  
136 shall establish protocols for conducting such investigations.

137 [(b)] (c) The director shall maintain a state-wide registry of the  
138 reports received, the evaluation and findings and actions  
139 recommended.

140 [(c)] (d) Neither the original report nor the evaluation report of the  
141 investigator which includes findings and recommendations shall be  
142 deemed a public record for purposes of section 1-210, as amended. The

143 name of the person making the original report shall not be disclosed to  
 144 any person unless the person making the original report consents to  
 145 such disclosure or unless a judicial proceeding results therefrom.

146 Sec. 4. Subsection (c) of section 46a-11e of the general statutes is  
 147 repealed and the following is substituted in lieu thereof (*Effective*  
 148 *October 1, 2004*):

149 (c) If the director commences an investigation and finds that the  
 150 person with mental retardation is seriously in need of immediate  
 151 protective services, he shall report the facts of the case to the  
 152 commissioner and the commissioner shall not delay the  
 153 commencement of protective services pending the full evaluation  
 154 report. If the commissioner's proposed action involves the removal  
 155 from his home of a person with mental retardation under  
 156 guardianship or of a person with mental retardation who is competent  
 157 and does not voluntarily consent to his removal, the commissioner  
 158 shall follow the procedures mandated in [subsection (k) of section 19a-  
 159 448] section 17a-274, as amended, including the filing of an application  
 160 in the Court of Probate pursuant to subsection (b) of section 46a-11a, as  
 161 amended by this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

**HS**            *Joint Favorable C/R*

PH

**PH**            *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Impact
Office of Protection & Advocacy; Department of Mental Retardation	See Below

**Municipal Impact:** None

**Explanation**

The bill makes changes to the reporting of suspected abuse, neglect or death of a person with mental retardation that both the Department of Mental Retardation (DMR) and the Office of Protection and Advocacy for Persons with Disabilities (P&A) are involved in.

In FY 03 there were 12 deaths (of persons with mental retardation where DMR has direct or oversight responsibility) reported to P&A where abuse or neglect were suspected. During the first six months of FY 04 there have been 8 such deaths reported. The change to P&A's coverage of clients age 60 or older is not anticipated to result in a change to their caseload as its consistent with current practice.

In most cases where a death has occurred and abuse or neglect has been suspected, the detection of such abuse or neglect may not result in the first 24 hours after the death. It is unclear whether DMR could fully meet this reporting requirement when such detection may not occur during the same time period. Whether the reporting requirement (within 24 hours of the death where abuse or neglect is suspected) could be met by DMR reporting all deaths to P&A within that time period (there were 160 in FY 03), is also unclear.

Reducing the mandatory reporting of reasonable cause to suspect that a person with mental retardation has been abused or neglected

from five to three days is not anticipated to result in a fiscal impact. Currently, more than half of the reports of abuse/neglect are reported to P&A within three days. Full compliance with the bill's requirement is anticipated to be achieved within DMR's current administrative protocol.

Although the bill does not change P&A's requirements (as the receiver of the reporting) from current practice, to the extent that P&A would maintain the responsiveness within their Abuse/Neglect Investigation Unit, on-call duties may be enhanced. P&A currently utilizes federal funding to support their adult protection services.



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**OLR Bill Analysis**

HB 5198

**AN ACT CONCERNING THE OFFICE OF PROTECTION AND  
ADVOCACY FOR PERSONS WITH DISABILITIES****SUMMARY:**

This bill changes how the Office of Protection and Advocacy (OPA) investigates deaths of Department of Mental Retardation (DMR) clients to which abuse or neglect is alleged to have contributed. Under current law, the OPA director must generally investigate when he receives a report of alleged abuse or neglect of anyone with mental retardation who is between the ages of 18 and 59. When he receives a report that alleged abuse or neglect may have caused the death of such a person and DMR had direct oversight responsibility for the person's medical care, he must investigate to determine whether abuse or neglect occurred, unless a court order requires otherwise.

The bill expands these requirements to cover clients age 60 and older, and requires the DMR commissioner to notify the OPA director, or his designee, within 24 hours after these deaths occur. The Department of Social Services' (DSS) Elderly Protective Services unit is charged with investigating alleged abuse and neglect of citizens aged 60 and over. It is not clear whether that department would continue to investigate in these circumstances. The Department of Children and Families investigates suspected abuse and neglect of children.

The bill also shortens, from five days to 72 hours, the time within which mandated reporters of any suspected cases of abuse or neglect of persons with mental retardation must report to OPA.

The bill makes two technical changes.

EFFECTIVE DATE: October 1, 2004

**TIME FRAME FOR REPORTING SUSPECTED ABUSE OR  
NEGLECT OF INDIVIDUALS WITH MENTAL RETARDATION**

The bill requires certain individuals (e.g., doctors, clergy) to report to

OPA as soon as practicable, but no later than 72 hours after they have reasonable cause to suspect or believe that a person with mental retardation between the ages of 18 and 59 has been abused or neglected. Under current law, these individuals must report to OPA within five days of their first reasonable suspicion.

**COMMITTEE ACTION**

## Human Services Committee

Joint Favorable Change of Reference

Yea 17      Nay 0

## Public Health Committee

Joint Favorable Report

Yea 22      Nay 0